

**ANNUAL REPORT
OF THE
ENVIRONMENTAL QUALITY SERVICE
COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2006

INDIANA LEGISLATIVE COUNCIL

2006

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ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Thomas Easterly
Indianapolis

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Staff

Robert Bond
Attorney for the Council

Bernadette Bartlett
Fiscal Analyst for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly directed the Environmental Quality Service Council (EQSC) to do the following:

- (1) Study and make findings and recommendations concerning the positive and negative aspects of enacting legislation that would prohibit rules adopted under IC 13 from being more stringent than corresponding provisions of federal law (P.L. 100-2006, SECTION 16 (SEA 234)).
- (2) Study and make findings and recommendations concerning the following (P.L. 133-2006, SECTION 1 (HEA 1285)):
 - (A) The most effective ways of implementing the Renewable Fuels Standards of the federal Energy Policy Act of 2005 in Indiana.
 - (B) The feasibility of requiring motor vehicles sold in Indiana to meet the flexible fuel vehicle standards of:
 - (i) eighty-five percent (85%) ethanol (E85) motor fuel for gasoline powered motor vehicles; and
 - (ii) twenty percent (20%) biodiesel (B20) motor fuel for diesel powered motor vehicles.
 - (C) The regulation of outdoor wood-burning furnaces.
 - (D) The use of methane gas from landfills and anaerobic digestion as a fuel source.

The Legislative Council also directed the EQSC to study the following topics:

- (1) The quality of the water in Lake Michigan and Indiana's impact on the water quality and the continued participation of Indiana in the Great Lakes Protection Fund (SR 57).
- (2) Regional sewer districts (HR 72).

II. INTRODUCTION AND REASONS FOR STUDY

The activities of the EQSC in 2006 were conducted to discharge the EQSC's various responsibilities under P.L. 100-2006, P.L. 133-2006, and the Legislative Council resolution assigning topics to the EQSC.

III. SUMMARY OF WORK PROGRAM

The EQSC met three times on the following dates at the following locations to consider indicated topics.

August 18, 2006	Room 211, Indiana State Library	Mercury switch removal and recovery, waste tires
September 7, 2006	Conference Room C, Indiana Government Center South	Great Lakes Compact, Great Ships Initiative, regional sewer districts
October 30, 2006	Chamber of the House of Representatives	Outdoor wood-burning furnaces, Environmental Crimes Task Force, rules more stringent than federal law, regional sewer districts, wastewater and water infrastructure needs

IV. SUMMARY OF TESTIMONY

First Meeting - August 18, 2006

Commissioner's Report - Thomas Easterly, Commissioner of IDEM, presented the Commissioner's Report, which included comments on the following: 2006 environmental legislation, IDEM's environmental goals, air quality issues, IDEM permit issuance, percent of activities meeting regulations, enforcement actions, possible 2007 legislation, major regulatory initiatives, and rules in progress.

Mercury Switch Removal and Recovery Program - Dr. William Beranek, president of the Indiana Environmental Institute, presented a report developed by a work group consisting of various private sector and public sector representatives concerning Indiana's mercury switch removal and recovery program. Mercury, a potent contaminant, is released to the environment from mercury switches in vehicles when the vehicles are demolished and recycled. The purpose of the program is to remove as many switches as possible before the vehicles enter the demolition and recycling process. The program will be conducted under a plan developed by vehicle manufacturers and approved by IDEM. Vehicle manufacturers will be responsible for certain education, training, and recycling costs. Switch removers will be paid a bounty in an amount between \$1 and \$5, as determined by IDEM, for each switch removed. Mercury switches are no longer installed in vehicles. Issues to be further considered are whether mercury from anti-lock brake systems should be addressed by the program, whether switch removers should be indemnified from environmental liability by vehicle manufacturers, and whether reporting requirements are adequate for evaluation of the program. The recent adoption of a national mercury switch removal program calls into question whether the national program will supersede the state

program.

Waste Tires - Dr. Beranek addressed the issue of waste tires. There is currently a market for waste tires, which can be processed for various uses, but the state could do more to encourage the use of waste tires.

Second Meeting - September 7, 2006

Great Lakes Compact - Kyle Hupfer, Director, Indiana Department of Natural Resources (IDNR) addressed the Great Lakes - St. Lawrence River Basin Water Resources Compact, which regulates diversions of water from the Great Lakes basin and water use in the basin. Although the Council of Great Lakes Governors has entered into an agreement to pursue the Compact, none of the legislatures of the basin states has ratified the Compact. The consent of Congress would be needed to implement the Compact. The Compact would place restrictions on new or increased diversions of water and intra-basin transfers of water and specify when communities, states, or provinces may act and when regional action is required. The development of conservation and efficiency goals and objectives would be required of states, provinces, and regions.

Great Ships Initiative - Rich Cooper, Executive Director, Indiana Ports Commission, Steve Mosher, Burns Harbor Port Director, and Steve Fisher, Executive Director, American Great Lakes Ports Association, addressed the Great Ships Initiative. The Initiative is a research and development project funded jointly by the Indiana Port Commission and other Great Lakes ports, the U.S. Department of Transportation, the National Fish and Wildlife Foundation, and other federal agencies with the goal of accelerating the development and availability of ballast water treatment technology for oceangoing vessels. The Indiana General Assembly declared its support for the Initiative by the adoption of HCR 35-2006. Improved ballast water technology is needed to curb the introduction of invasive species, which have a major environmental and economic impact. Efforts are underway to improve technology and to prompt federal and international action on the issue.

Regional Sewer District Issues - Connie Stevens, board member of the Indiana Regional Sewer District Association, presented a report on regional sewer districts. She described procedures for forming, enlarging, or rescinding a district, the role of the district, state involvement with districts, and the benefits and costs of providing sewer service.

Sandra Flum, Director of Intergovernmental Relations, IDEM, addressed IDEM's involvement with district issues, particularly the formation of districts. She addressed the extent to which district board members are elected or appointed, required documentation for the formation of a district, and potential overlap of sewer service that might result from the formation of a district.

Representative Donald Lehe expressed his concern with the proposed inclusion of territory in Carroll County in the Twin Lakes Regional Sewer District, a concern shared by Rep. Eric Gutwein and Rep. Richard McClain. Several Carroll County residents voiced their opposition to the proposed expansion of the district to include their area. The residents believe: (1) that they

are not properly represented on the district board; (2) that the board should be held to a higher standard of accountability; (3) that they have not been given appropriate notice of the proposal; (4) that the law should provide for the protection of their interests by appointment of a citizens' advocate; (5) that districts should be limited to areas of demonstrated need; (6) that district formation should be subject to a referendum; (7) that any area served by a private sewage system should be excluded from the district; (8) that district sewer rates should be subject to regulation; (9) that residents in later phase projects do not get the same public grant and lower interest rate benefits as residents in earlier phase projects; and (10) that it is unfair to require property owners to pay through the establishment of a district for their neighbors' failure to maintain septic systems.

John Julien, Umbaugh & Associates, addressed the reasons for nonuniform application of sewer rates in districts.

Third Meeting - October 30, 2006

Outdoor Wood-burning Furnaces - Thomas Easterly presented a report on outdoor wood-burning furnaces (OWF's). The report distinguishes this type of furnace from other types of wood-burning stoves and boilers. Advantages of OWF's include reduced heating bills, improved indoor air quality, reducing asthma and allergies, reducing greenhouse emissions, increasing safety, and reducing dependence on fossil fuels. Environmental concerns include high air pollution emissions per unit of fuel due to incomplete combustion of wood, higher exposure of people to smoke because of low stack heights, and year-round emissions for water heating rather than just during the heating season. IDEM is concerned about emissions of carbon monoxide, complex organics, and particulate matter. The U.S. Environmental Protection Agency (EPA) does not regulate OWF's, but the EPA is expected to issue model regulations. Some states and some political subdivisions in Indiana have adopted OWF regulations. The Air Pollution Control Board has proposed rules, but the rulemaking process has been suspended pending consideration of various options. Mr. Easterly believes that state regulation is appropriate because of the potential problem's presented by OWF's, especially in nonattainment areas.

Peter Guldborg, president of Tech Environmental, Inc., presented a report on OWF's. The report: (1) supports OWF's as a clean and affordable heating source for homeowners in Indiana; (2) opposes state regulation of the installation and use of OWF's; (3) rebuts a Northeast States for Coordinated Air Use Management study that highlights issues concerning the use of OWF's; (4) states that OWF's have essentially the same particulate matter emissions as an EPA-certified wood stove; (5) states that properly installed OWF's fully comply with National Ambient Air Quality Standards for fine and coarse particulate matter; (6) addresses OWF stack height requirements; and (7) recommends that the state defer any action on OWF's until the EPA develops voluntary efficiency and emission guidelines.

Environmental Crimes Task Force - Rep. Dvorak summarized the activities of the Environmental Crimes Task Force. Current environmental crimes statutes are vague and criminalize some actions that violate administrative rules and orders, but do not specifically violate a statute. The

Task Force has studied other states' statutes and is formulating a draft under which the violations will be more clearly stated, the punishment will fit the crime, and the Indiana Department of Environmental Management will be able to assist local prosecutors.

Regional Sewer Districts - Donald Tribbett, an attorney from Logansport, presented a report addressing some of the regional sewer district (RSD) issues that were considered at the EQSC's meeting of September 7, 2006. RSD's are intended to facilitate sewer installation and maintenance in rural areas. The expansion of a RSD boundary is initiated by the filing of a petition by an eligible governmental entity, which happened in the case of the proposed expansion of the Twin Lakes Regional Sewer District into Carroll County. Mr. Tribbett believes that the proposed expansion was well publicized, that information on the proposed expansion was readily available to all concerned, that appropriate representation of the expansion area on the RSD board was proposed, and that the proposal includes appropriate accountability and project review. He questions whether a proposal for election of board members is viable, given the expense, the absence of voting areas that coincide with existing political subdivisions, and the potential difficulty in finding candidates. RSD's provide services of general benefit, and testing of individual septic systems to determine whether to substitute RSD sewer service would be prohibitively expensive.

Rules No More Stringent Than Federal Law - The issue is whether the General Assembly should enact a law that would prohibit rules adopted under IC 13 from being more stringent than corresponding provisions of federal law. Rep. Wolkins noted that approximately one-third of the states have enacted such laws in various forms. The laws generally permit state agency regulation in areas not subject to EPA regulations. He cited IC 14-34-1-4 and IC 22-8-1.1-17.5, both of which include this type of restriction. He also cited an article from the State Environmental Resource Center claiming that states tie their own hands with "no more stringent" laws. Rep. Wolkins believes that state regulators try to meet specific goals without a balanced view of costs and benefits and are not directly accountable to the public. Legislators can identify issues that call for regulation more stringent than corresponding provisions of federal law, and have done so in the areas of wetlands and hazardous air pollutants. Rep. Wolkins believes that federal law should serve as a baseline, and that the General Assembly should determine when and to what extent state law should go beyond that baseline.

Mr. Easterly presented a report on the issue. The report outlines the restrictions that would be placed on state regulators, useful current regulation that would not have been possible if the restriction had been in place, and other possible issues with and possible benefits from the imposition of the restriction. He recommends against the establishment of the restriction, and suggests instead that additional oversight might be instituted to ensure that legal requirements are followed when rules are proposed that go beyond federal requirements.

Sen. Gard addressed the issue and agreed with Mr. Easterly's presentation. She believes that the complexity of federal environmental law requires the attention of state regulators who have greater expertise than legislators. The imposition of the restriction in other states has resulted in increased litigation. Indiana's lengthy environmental rulemaking process provides ample

opportunity for public participation and objection. That process already incorporates notice of proposed rules that are more stringent than federal law or that create a restriction or requirement in a subject area not addressed by federal law (IC 13-14-9-3 and IC 13-14-9-4). The General Assembly has exercised its option to halt rulemaking when necessary.

Wastewater and Water Infrastructure Needs - Mr. Martin Wessler, President and CEO, Wessler & Associates Consulting Engineers, presented on behalf of the American Council of Engineering Companies (ACEC) a report concerning wastewater and water infrastructure needs. The report outlines the statewide gap between available and needed funding with respect to combined sewer overflows, wastewater conveyance and treatment, failed septic system repairs, stormwater management, and drinking water systems. The report also includes estimates of funding needed for various categories of wastewater and water infrastructure and estimates of needs in each county. The ACEC requests that the EQSC further study the issue and assist with the sponsorship of a resolution to address the issue in the next legislative session.

V. COMMITTEE RECOMMENDATIONS

The following recommendations were approved by voice vote of a majority of the appointed members of the EQSC:

1. Mercury Switch Removal and Recovery Program - The General Assembly should investigate ways to provide additional funding to the program.
2. Great Ships Initiative - IDEM and the administration should continue to work with other Great Lakes states on the ballast water issue to reach a regional solution.
3. Regional Sewer District Issues - The EQSC is concerned about properties with private, properly functioning, and legal sewage disposal systems being required to connect to RSD sewage disposal systems.
4. Outdoor Wood-burning Furnaces - The EQSC:
 - (a) is concerned that emissions from OWF's can be a problem, especially in nonattainment areas;
 - (b) requests that the Air Pollution Control Board wait to resume OWF rulemaking until the EPA issues model regulations; and
 - (c) requests that the commissioner of IDEM report back to the EQSC on the issue.

WITNESS LIST

Dr. William Beranek, Indiana Environmental Institute
Rich Cooper, Indiana Ports Commission
Terry Dill
Thomas Easterly, IDEM
Steve Fisher, American Great Lakes Ports Association
Sandra Flum, IDEM
Peter Guldberg, Tech Environmental, Inc.
Kyle Hupfer, IDNR
John Julien, Umbaugh & Associates
Representative Donald Lehe
Steve Mosher, Port of Burns Harbor
Pat Robertson
Joe Smiley
Tom Spackman
Donald Tribbett
Connie Stevens, Indiana Regional Sewer District Association
Martin Wessler, Wessler & Associates Consulting Engineers